IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 901 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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METRO ENGINEERING WORKS - Appellant(s)
Versus
JAGDISH IRON AND BRASS FACTORY & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
NOTICE UNSERVED for Defendant(s) : 1,
None for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/07/2006

ORAL JUDGMENT

Present Appeal has been filed by the appellant,original-plaintiff(hereinafter referred to as 'the plaintiff') challenging the judgment

and decree passed by the learned Judge, City Civil Court at Ahmedabad, dated 31st January 1991 in Civil Suit No. 1783 of 1983 in dismissing the said suit.

2. The plaintiff, a partnership firm, filed the Civil Suit No. 1783 of 1983 in the City Civil Court at Ahmedabad for a money decree for Rs. 34,810/-[Rs. 27,050/- by way of Principal amount and Rs. 7,706/- by way of interest]. It was averred in the suit that the defendant No.1 firm requested for financial assistance from the plaintiff whereupon the plaintiff in S.Y. 2030 advanced Rs. 16,650/- by way of Sharafi loan and the defendants agreed to pay interest at 15% on this advance. It was further averred that the defendants paid Rs. 1,650 in the S.Y.2030 and deducting the said amount at the end of S.Y. 2030, Rs. 15,000/- remained due and payable by the defendants. That during the subsequent year, defendants paid Rs. 6,500 and an amount of Rs.

10,000/- remained due and payable at the beginning of S.Y. 2032. There were many transactions thereafter, however, at least an amount of Rs. 27,050/- was due and payable with 15% interest and as the same was not paid the present Suit came to be filed.

3. The Suit was resisted by the defendants. A written statement came to be filed at Exh. 22 contending inter alia that the suit is barred by limitation and liable to be dismissed. It was further submitted that the suit was also barred in view of the provisions contained in the Money Lenders Act. It was denied that the defendant No.1 asked for Sharafi loan from the plaintiff. The learned Trial Judge framed the Issues vide Exh. 70. Plaintiff examined partner, Rajendra Shantilal Panchal at Exh. 74 and also examined the witness from Ahmedabad-Shahibaug Cooperative Society at Exh. 109. Defendant No.3 examined himself at Exh. 116. Documentary evidences were

produced at Exhs. 86 to 96 by way of books of accounts of the plaintiffs. A writing dated 17.5.1982 executed by defendant No.2 was produced at Exh. 67, other documentary evidences were also produced on behalf of the defendants. On appreciation of evidence, the learned Trial Judge held that the suit claim is time barred and accordingly dismissed the Suit.

6. It is required to be noted that, on appreciation of evidence, the Trial Judge held that the plaintiff has proved that the defendants had taken loan on interest from the plaintiff-firm and agreed to pay interest at 15% p.a. The learned Trial Judge has also held that the plaintiff firm proved that Rs. 34,810/- was due and payable by the defendants. The learned Trial Judge has also held that the suit is not barred by the provisions of Money Lenders Act and/or the provisions of Usurious Loans Act, and that the provisions of Damduppat does not apply

to the transaction in question. However, as stated above, the learned Judge dismissed the suit on the ground that the suit is barred by limitation. So far as the question of limitation is concerned,it is required to be noted that as per the defendants, in the S.Y. 2030, Rs. 15,000 were deposited in defendant No.1 firm carrying interest at the rate of 15%. Samvat Year 2030 means 1976 AD, and as rightly held by the learned Judge by Exh. 67, the period of limitation would not be extended since there was no acknowledgment of debt. The learned trial Court has also rightly rejected the contention of the plaintiffs that limitation would start from the demand. On evidence, it cannot be said that the finding of the learned Trial Judge that the Suit is barred by limitation is in any way erroneous and contrary to the evidence on record. On going through the entire evidence, documentary as well as oral, this Court is in complete agreement with the reasoning and finding of the Trial Court.

7. For the reasons stated above, the present Appeal is required to be and it is dismissed. No costs. Interim relief, if any,stands vacated forthwith.

[M.R. Shah, J.]

RMR.